

	POLICY & PROCEDURE	SERIES #729	PAGE 1 OF 8
	SUBJECT CONSTITUTIONAL REQUIREMENTS AND POLICE AUTHORITY		EFFECTIVE DATE 06/07/08
			ORIGINATOR Admin. Branch
	DISTRIBUTION ALL MANUALS	AMENDS/SUPERSEDES/CANCELS P&P #729 dated 08/15/98	

I. PURPOSE:

To define Constitutional boundaries and authority for the enforcement of laws, to establish procedures for assuring compliance with Constitutional requirements during criminal investigations, and the disclosure of exculpatory evidence in criminal prosecutions.

This policy sets forth guidelines concerning the use of discretion by officers; to define the authority, guidelines and circumstances when officers should exercise alternatives to arrests and pre-trial confinement; and delineates when supervisors must report Brady material through the proper chain-of-command.

II. POLICY:

The United States Constitution guarantees citizens certain safeguards from government intrusion into their lives. These safeguards are the cornerstone of the criminal justice system in America. Consequently, the safeguards place limitations on the authority of police to enforce the laws of the nation, state, and city. Criminal prosecutions will be conducted in accordance with current case law.

III. PROCEDURE:

A. Law enforcement authority to enforce laws:

1. Section 15.2.1704 of the Code of Virginia gives police officers of cities and towns the authority to enforce the criminal laws of the Commonwealth and ordinances and regulations of the city in which they are appointed. Section 19.2-250 of the Code of Virginia grants authority to enforce state laws one mile beyond the boundaries of the city.
2. Section 49-1 of the Code of Virginia requires that all officers, upon entering office, take an oath whereby they swear (or affirm) to support the Constitution of the United States and the Commonwealth of Virginia.

APPROVED:
CHIEF OF POLICE



3. Limitations on law enforcement authority derive from the federal Constitution, city, state and federal legislation and corresponding case law. Further, the Constitution, legislation and case law is interpreted by the Attorney General, the Commonwealth's Attorney, and the City Attorney who issue opinions about the same. Division policies, rules and regulations and City administrative decisions are also applicable.

a. Statutory Limitations:

Section 15.2-1704 of the Code of Virginia prohibits officers from enforcing civil laws of the Commonwealth except they may execute and serve an order of temporary detention. Officers executing an order of temporary detention shall transport the person to the appropriate institution which will be designated by Mental Health Services.

b. Judicial Limitations:

Courts constantly interpret laws that place limitations on the authority of law enforcement officers. The more common include: Miranda rights/warnings, rulings on search and seizure, eye-witness identification, and the validity of line-ups.

B. The Fifth Amendment right against self-incrimination.

The case laws covering Miranda warnings have established several guidelines for officers to determine when the warning must be administered. If a person is taken into custody and is subject to interrogation, Miranda warnings must be administered. As to what constitutes "arrest custody", if the subject is not free to leave and the interrogation persists for more than a few minutes or, there is involuntary movement of the subject a significant distance, then he is in arrest custody. In determining if a suspect is free to leave the police officer's presence, courts will look at the circumstances of the interview. Concerning the interrogation, if officers conduct routine, preliminary questioning (i.e., name, date of birth, address) near or at the scene of an investigation, no "custodial interrogation" exists and Miranda is not required.

1. Prior to interrogation, Miranda must be administered:

a. When the suspect is in arrest custody (i.e., not free to leave), and

b. When the suspect believes he or she is not free to leave.

2. In order to achieve uniformity in administering Miranda warnings, police

officers will be issued cards with the Miranda warnings.

3. After clearly issuing the warning and before interrogation commences, the officer shall ask and shall receive with an affirmative response to the question: **“Do you understand each of these rights I have explained to you?”**

C. Limitations on search and seizure:

The Fourth Amendment guarantees the right of people to be free from unreasonable searches and seizures of their homes, persons, and things. The Supreme Court is constantly interpreting the Fourth Amendment as it applies to police conduct. Illegally seized items of evidence may not be admitted in court and may lead to an unsuccessful prosecution. Additionally, an illegally conducted search invites civil suits under the Civil Rights Act of 1964. In order to ensure that Fourth Amendment rights are protected, officers will obtain search warrants upon probable cause in all appropriate criminal cases except when the following circumstances exist:

1. Consent searches – The consent must be voluntarily given by someone who has the authority to give it. When exercising a consent search of a person’s residence (i.e., dwelling), it is recommended that the officer provide the consentor with a written consent form to be signed and attached to the IBR report. Officers should carefully consider all factors a reviewing court will contemplate in determining whether consent was voluntarily given. Further, consent may be withdrawn at any time and when withdrawn the search must be discontinued until a warrant can be obtained.
2. Emergency to save life or property or exigent circumstances – An emergency exists, the primary motive must be to protect property and/or people, and the area searched must be associated with the emergency.
3. Plain view, Plain smell, Plain feel – The officer must have a legal reason to be where he or she can discover fruits, instrumentalities or evidence of a crime, and/or contraband; the discovery must be inadvertent; and the property must be immediately recognizable as the fruit, instrumentalities or evidence of a crime, or be contraband.
4. Abandoned Property
5. Incident to Arrest – Only the area within the immediate control of the person may be searched.
6. Hot Pursuit

7. Movable vehicle (Carroll Rule)

D. Probable Cause

Most searches and all arrests are based on the police officer's perception of probable cause. According to the Supreme Court: "Probable cause exists where the facts and circumstances within the arresting officer's knowledge and of which the arresting officer had reasonable trustworthy information are sufficient in themselves to warrant an officer of reasonable caution in the belief that an offense has been, or is being committed".

E. Limitations pertaining to eyewitness identification.

Eyewitness identification may take the following form:

1. On-scene investigation – One-on-one identifications have been held constitutional as long as the period of time between the offense and the identification is reasonable.
2. Line-ups – Line-ups should be conducted using a minimum of six persons having similar physical characteristics as the suspect. If the accused requests an attorney, the line-up may not take place until that attorney is present. The attorney may not offer any suggestions concerning the conduct of the line-up, but may merely observe. All line-ups must be documented on the line-up documentation form by the investigator and shall include at a minimum:
 - a. The date, time and place the line-up is conducted
 - b. Name of participants and witnesses
 - c. Location of the suspects or participants in the line-up
 - d. Results of the line-up.
3. Photo Line-ups – In conducting photo line-ups, the photos must depict persons displaying similar physical characteristics as the suspect. Simply showing an eyewitness a single photo of the suspect has generally been ruled unconstitutional. As a general rule, a photo line-up containing 6-8 photos would be reasonable. Photographs shown to witnesses will not contain any identifying information, other than contributor numbers. Photo line-ups will be documented and maintained in the case file for court purposes and shall include at a minimum:

- a. The date, time and place the line-up is conducted.
- b. Name of participants and witnesses, and
- c. Results of the line-up.

F. Exculpatory Evidence:

1. Exculpatory evidence is favorable evidence to an accused that is material either to guilt or to punishment. Exculpatory evidence is material if there is a reasonable probability that the trial would have resulted in a different outcome had the evidence been disclosed to the defense. A “reasonable probability” is one that is sufficient to undermine confidence in the outcome of the proceeding. At the heart of this question is a determination whether the evidence favorable to the accused could reasonably be considered as placing the entire case in such a different light that confidence in the trial or verdict is undermined.
2. The Commonwealth is required to disclose to the defense exculpatory evidence, or it is a violation of the Due Process Clause of the Constitution. Information known to the police is information within the Commonwealth’s knowledge and a prosecutor is obligated to disclose it, regardless of who has possession of such material. The failure of the Commonwealth to turn over favorable evidence may result in a mistrial, a reversal of a conviction, or even a dismissal of the charges.
3. The Brady decision (Brady v. Maryland, U.S. Supreme Court, 1963) made it mandatory that the prosecution disclose to the defense any information on witness credibility. “Brady material” includes but is not limited to information that would bear negatively on the credibility of material government witnesses, including police employees who may testify. The Brady disclosure requirements extend to information that can be used to impeach a prosecution witness’ credibility. Brady material and exculpatory evidence includes but is not limited to:
 - a. An unknown fingerprint at the crime scene
 - b. Other physical evidence that may be favorable to the defense
 - (1) Unrelated shell casings/bullets at the crime scene
 - (2) A known fingerprint at the crime scene that does not match the accused
 - (3) DNA mixtures or DNA which the accused is eliminated as a contributor
 - c. Conflicting witness/victim statements and reports
 - d. Witnesses who were not able to identify the accused
 - e. Known untruthfulness of a witness/victim

- f. Biased witnesses/victims
 - (1) Any plea agreement or offer of leniency for cooperation
 - (2) Any known disagreement among parties
 - g. Prior criminal history of witnesses/victims
 - h. Scientific reports favorable to the accused
 - i. Evidence mitigating punishment (evidence that may show the defendant's actions to seem less serious)
4. If it is determined that a Police employee may fall under the Brady decision by acts of untruthfulness, bias and/or the commission of crimes, the supervisor shall make notifications up the chain-of-command and a meeting set up with the Chief of Police and Commonwealth Attorney to make a final determination.
5. There is a continuing duty to disclose exculpatory evidence to the defense. Therefore, if it is discovered the existence of additional material falling within the scope of exculpatory, it is required of division personnel to disclose such information to the prosecution.
- G. Limitations on law enforcement authority by local courts:
- Occasionally, the local courts may limit law enforcement authority to enforce state statutes and local ordinances by using injunctions.
- H. Limitations on police authority by Commonwealth Attorney:
- Occasionally, the Commonwealth Attorney may issue opinions to the Division which may impose limitations on officers. These areas include, but are not limited to:
- 1. Prosecution of certain cases
 - 2. Extradition
 - 3. Enforcement of certain statutes pending opinions from the Attorney General's Office.
- I. Limitations on police enforcement actions by City Council, City Manager or the Chief of Police include, but are not limited to:
- 1. Parking violations
 - 2. Police Division policy and procedures or rules and regulations.
- J. Changes in laws/interpretational limitations: Periodically, changes take place

which may impose new limitations on police authority or remove or alter existing limitations. Normally, annual updates on such changes are provided to all personnel by the Commonwealth's Attorney. In the event immediate changes in Division operations occur, the Commonwealth's Attorney's Office may provide information orally and confirm it in writing.

K. Compliance with Constitutional requirements during criminal investigations:

Officers conducting criminal investigations will take all precautions necessary to ensure that all persons involved are afforded their constitutional safeguards. Officers will ensure that:

1. All statements or confessions are voluntary and not coerced.
2. All persons are advised of their rights in accordance with this policy and constitutional laws.
3. All arrested persons are taken within a reasonable amount of time before a magistrate for formal charging.
4. Prejudicial pre-trial publicity of the accused is avoided so as not to interfere with a defendant's right to a fair and impartial trial. See Policy & Procedure 509, Public Information.

L. The use of discretion by officers:

1. Officers, by the nature of their job, are required to exercise discretion in the performance of their duties. The Division provides officers with written rules and regulations, policy and procedures, orders, directed patrol assignments, and training in order to aid them in making decisions which govern discretion in performing their duties.
2. With the exception of rules and regulations, Division policy generally gives officers guidelines to consider in exercising their discretion. It is up to the individual officer to consider the circumstances, and then, using knowledge, training, and good judgement, make appropriate decisions. Supervisors must closely observe the use of discretion by their subordinates and point out factual errors or alternatives that may be more appropriate.

M. Alternatives to arrest and pre-arraignment confinement:

1. Under certain circumstances, officers are faced with situations where an arrest and pre-arraignment confinement will not be possible. In this case, officers may elect to exercise certain alternatives such as the issuance of summonses, referral to a social service agency, or simply a

warning. Example may include:

- a. Authority to issue summonses in lieu of arrest/confinement.

Section 19.2-74 of the Code of Virginia authorizes police officers to issue a summons in lieu of arrest for persons charged with a misdemeanor criminal offense except D.U.I., and drunk in public. Additionally, Section 19.2-74 authorizes the use of summonses when enforcing city ordinances.

- b. Informal handling of criminal matters:

Officers often deal with situations where the public interest would be better served by social service agencies or crisis and professional organizations. When in the judgement of the officer a better solution to the problem will be achieved by use of alternatives to enforcement action, then he should refer the citizen to an appropriate agency.

- c. Use of warnings as an alternative to arrest:

Use of warning may sometime provide a satisfactory solution to a problem and may enhance the public perception of the Division. In determining if a warning should be issued, the officer should consider:

1. The seriousness of the offense
2. The likelihood that the violator will heed the warning.